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Attorneys for WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF STRUCTURED ASSET MORTGAGE
INVESTMENTS II INC. BEAR STEARNS MORTGAGE FUNDING TRUST
2007-AR4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-
AR4

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

In re

PHILIP S. CARSON AND GWENDOLYN S.
CARSON,

Debtor(s).

Case No. 09-33395

Chapter 7

D.C. No. PD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

WELLS FARGO BANK, NATIONAL
ASSOCIATION AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF
STRUCTURED ASSET MORTGAGE
INVESTMENTS II INC. BEAR STEARNS
MORTGAGE FUNDING TRUST 2007-AR4
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-AR4,

Movant,

vs.

PHILIP S. CARSON AND GWENDOLYN S.
CARSON, Debtor(s); JOHN R. ROBERTS,
Chapter 7 Trustee,

Respondents.

LBR 4001-1 and 9014-1(f)(1)

DATE: October 6, 2009
TIME: 9:31 a.m.
CTRM: 33

501 "I" Street
Sacramento, CA 95814

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1 Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured
2 Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR4 Mortgage Pass-
3 Through Certificates, Series 2007-AR4 ("Movant"), moves this court for an order terminating the
4 automatic stay of 11 U.S.C. § 362 as to Movant, so that Movant may commence and continue all acts
5 necessary to enforce its security interest in real property generally described as 7306 North 88th
6 Lane, Glendale, Arizona 85305.

7 On or about June 29, 2009, Philip S. Carson and Gwendolyn S. Carson ("Debtors") filed a
8 voluntary petition under Chapter 7 of the Bankruptcy Code, and John R. Roberts was appointed as
9 Chapter 7 Trustee. As a result of said filing, certain acts and proceedings against Debtors and the
10 bankruptcy estate are stayed as provided in 11 U.S.C. § 362.

11 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **MOVANT IS ENTITLED TO RELIEF FROM THE
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).**

15 **NO EQUITY**

16 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the
17 debtor does not have any equity in the property and the property is not necessary to the debtor's
18 effective reorganization.

19 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:
20 § 362(d)(2) reflects congressional intent to allow creditors to
21 immediately proceed against the property where the debtor has no
22 equity and it is unnecessary to the reorganization, even where the
debtor can provide adequate protection under § 362(d)(1). (Emphasis
added).

23 Id. at 610 (emphasis added).

24 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated
25 that in determining whether equity exists in the property for purposes of § 362(d)(2), all
26 encumbrances are totaled, whether or not all the lienholders have joined in the request for relief from
27 stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th Cir.
28 1984).

1 On or about May 1, 2007, Debtors, for valuable consideration, made, executed and delivered
2 to Bear Stearns Residential Mortgage Corporation ("Lender") a Note in the principal sum of
3 \$243,000.00 (the "Note"). Pursuant to the Note, Debtors are obligated to make monthly principal
4 and interest payments commencing July 1, 2007, and continuing until June 1, 2037, when all
5 outstanding amounts are due and payable. The Note provides that, in the event of default, the holder
6 of the Note has the option of declaring all unpaid sums immediately due and payable. A true and
7 correct copy of the Note is attached to the concurrently served and filed Exhibits hereto as exhibit A
8 and incorporated herein by reference.

9 Movant is the current owner of the note and is entitled to enforce the provisions of the Note
10 and Deed of Trust.

11 On or about May 1, 2007, the Debtors made, executed and delivered to Lender a Deed of
12 Trust (the "Deed of Trust") granting Lender a security interest in real property commonly described
13 as 7306 North 88th Lane, Glendale, Arizona 85305 (the "Real Property"), which is more fully
14 described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs incurred as
15 a result of the Debtors' bankruptcy case may be included in the outstanding balance under the Note.
16 The Deed of Trust was recorded on May 4, 2007, in the Official Records of Maricopa County, State
17 of Arizona. A true and correct copy of the Deed of Trust is attached to the Exhibits as exhibit B and
18 incorporated herein by reference.

19 Subsequently, Lender's beneficial interest in the Note and the Deed of Trust was sold,
20 assigned and transferred to Movant. A true and correct copy of the Corporation Assignment of Deed
21 of Trust evidencing the Assignment of the Note and Deed of Trust to Movant is attached to the
22 Exhibits as exhibit C and incorporated herein by reference.

23 The obligation under the Note is in default as of January 1, 2009, for failure to make
24 payments to Movant. As of July 27, 2009, the total obligation due and owing under the Note is in
25 the approximate amount of \$265,802.77, representing the principal balance of \$253,304.38, interest
26 in the sum of \$8,588.14, late charges in the amount of \$341.58, escrow advances in the amount of
27 \$1,312.94, and a recoverable balance in the amount of \$2,255.73. This is an approximate amount for
28 purposes of this Motion only, and should not be relied upon as such to pay off the subject loan as

1 interest and additional advances may come due subsequent to the filing of the Motion. An exact
2 payoff amount can be obtained by contacting Movant's counsel. Further, Movant has incurred
3 additional post-petition attorneys' fees and costs in bringing the instant Motion. Moreover, the total
4 arrears under the Note are in the approximate sum of \$8,514.62, excluding the post-petition
5 attorneys' fees and costs incurred in filing the instant Motion.

6 **II.**

7 **RELIEF FROM STAY**

8 **LACK OF EQUITY**

9 Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and
10 Statements, the fair market value of the Property is \$210,500.00. True and correct copies of the
11 Debtors' bankruptcy Schedules "A" and "D" are collectively attached to the Exhibits as exhibit D and
12 incorporated herein by reference.

13 Based on the above, Movant maintains that the equity in the Property is as follows:

Fair Market Value:	\$210,500.00
Less:	
Movant's Trust Deed	<u>\$265,802.77</u>
Equity in the Property:	<\$55,302.77>

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17 As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this
18 is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to
19 relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

20 Debtors' Statement of Intent indicates it is the intent of the Debtors to surrender the Real
21 Property in full satisfaction of Movant's secured claim. A true and correct copy of the Debtors'
22 Statement of Intent is attached to the Exhibits as exhibit E and incorporated herein by reference.

23 **III.**

24 **MOVANT IS ENTITLED TO RELIEF FROM THE**
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).

25 **CAUSE - LACK OF ADEQUATE PROTECTION**

26 Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to adequate
27 protection of its interest in the Property.

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1 Movant submits that adequate protection in this case requires normal and periodic cash
2 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to
3 Movant, including all attorneys' fees and costs incurred in the filing of this motion.

4 Movant is informed and believes that Debtors are presently unwilling or unable to provide
5 adequate protection to the Movant and there is no probability that adequate protection can be
6 afforded to Movant within a reasonable time.

7 By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C.
8 § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

9 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

- 10 1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the enforcement by
11 Movant of all of its rights in the Real Property under the Note and the Deed of Trust;
- 12 2. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived;
- 13 3. Granting Movant leave to foreclose on the Real Property and to enforce the security
14 interest under the Note and the Deed of Trust, including any action necessary to obtain possession of
15 the Property;
- 16 4. Permitting Movant to offer and provide Debtors with information re: a potential
17 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
18 Mitigation Agreement, and to enter into such agreement with Debtors;
- 19 5. Alternatively, in the event this court declines to grant Movant the relief requested
20 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
21 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
22 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay
23 when due (a) the monthly installments of principal and interest, as required under the Note;
24 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in order to
25 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the
26 filing of this motion;

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1 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion be
2 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law; and

3 7. For such other and further relief as the court deems just and proper.

4 Dated: August 31, 2009

PITE DUNCAN, LLP

5 /s/ Erin L. Laney CA SBN 259863

6 ERIN L. LANEY

7 Attorneys for WELLS FARGO BANK, NATIONAL
8 ASSOCIATION AS TRUSTEE FOR THE
9 CERTIFICATEHOLDERS OF STRUCTURED
10 ASSET MORTGAGE INVESTMENTS II INC.
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13 CERTIFICATES, SERIES 2007-AR4
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